IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 19124 of 2004

Between:

Amaravathi Ramesh Gupta, s/o Rajaiah,
Owner of Mitsubhishi Van, r/o Thurkayamjal, Hythnagar Mandal, R.R.District.

..... PETITIONER

AND

1 Government of Andhra Pradesh, rep., by its Principal Secretary,
Department of Prohibition & Excise, Secretariat, Hyderabad.
2 The Commissioner of Prohibition & Excise, Government of A.P.,

Hyderabad.
3 The Deputy Commissioner, Prohibition & Excise, Nizamabad Range,

Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring order of the 3rd respondent dated 6-9-2004 directing the petitioner to produce the confiscated Mitsubhishi van No.AP 9T 5743 before the Station House Officer, Sanga Reddy, as illegal, arbitrary and in contrary to law.

Counsel for the Petitioner: MR.K.MURALI MUKUNDA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following:

ORDER:

Petitioner claims to be the owner of the vehicle bearing No.AP 9T 5743, which was seized on 15.08.1996 on the allegation that the vehicle was used for illegal transportation of IML in violation of provisions of the A.P.Excise Act (for short 'the Act'). In pursuance thereof, proceedings were initiated under Section 46 of the Act for confiscation of the vehicle and ultimately by order dated 21.08.1998, the vehicle was confiscated by the Deputy Commissioner of Prohibition and Excise. It appears that pending the said proceedings, interim custody of the vehicle was given to the petitioner subject to the condition of furnishing bank guarantee. The petitioner states that the said bank guarantee is still subsisting. The petitioner also states that though the order of confiscation was passed on 21.08.1998, the same was served on him only on 14.07.2004 and immediately thereafter, he preferred an appeal before the Commissioner of Prohibition and Excise on 25.08.2004 along with an application for stay. In the meanwhile, the criminal proceedings initiated against the petitioner under Section 8(b) of the A.P. Prohibition Act, 1995 ended in acquittal by Judgment dated 20-12-2002 in C.C.No.316 of 1999 on the file of the Special Court of Prohibition & Excise at Sangareddy. Thereafter, the petitioner made an application before the Deputy Commissioner of Excise for release of the Bank guarantee in view of the acquittal in criminal proceedings. Thereafter, the petitioner was served with

the order of confiscation dated 21-08-1998 and moreover by order dated 06-09-2004, the 2nd respondent directed the petitioner to produce the confiscated vehicle within seven days. Hence, this writ petition challenging the orders passed by the Deputy Commissioner of Prohibition and Excise dated 06.09.2004. This Court while directing notice to the respondents by order dated 14.10.2004, granted interim suspension of the said order.

Having heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise appearing for the respondents and particularly keeping in view the fact that against the order of confiscation the petitioner has already preferred an appeal which is pending before the second respondent-Commissioner of Prohibition and Excise, I am of the view that it would be appropriate to stay the order of confiscation till the disposal of the Statutory appeal.

Accordingly, the impugned order of 2nd respondent dated 06-09-2004 is set aside and writ petition is disposed of with a direction to the second respondent to dispose of the appeal pending on his file as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. Till the disposal of the said appeal, there shall be stay of operation of the order of confiscation dated 21-08-1998 subject to the condition that the bank guarantee furnished by the petitioner while obtaining interim custody of the vehicle in question is kept alive.

Accordingly, the writ petition is disposed of. No costs.

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26.10.2004

Note: Issue CC in one week

(b/o)

VGB

To

1 The Principal Secretary, Government of Andhra Pradesh,
Department of Prohibition & Excise, Secretariat, Hyderabad.
2 The Commissioner of Prohibition & Excise, Government of A.P.,

Hyderabad.
3 The Deputy Commissioner, Prohibition & Excise, Nizamabad Range,

Nizamabad.

4 2CCs to the Government Pleader for Prohibition and Excise, High

Court Buildings, Hyderabad. (OUT)

5 2CD copies